



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MPA- 174471

PRELIMINARY RECITALS

On May 17, 2016, the above petitioner filed a Hearing request, under Wis. Stat. § 49.45(5) and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability [“DCHAA”] regarding Medical Assistance [“MA”]. The Hearing was held via telephone from Madison, Wisconsin on June 21, 2016.

The issue for determination is whether DCHAA was correct to deny Prior Authorization [“PA”] for Speech and Language Therapy [“SLT”] for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



[Redacted] was not present at the June 21, 2016 Hearing)

Represented by:



Respondent:

Department of Health Services

[Redacted], CC-SLP, Speech-Language Pathology Consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 4 years old) is a resident of La Crosse County, Wisconsin.
2. On March 21, 2016 petitioner's provider, Gundersen Lutheran Medical Center, Inc. of La Crosse, Wisconsin, requested PA for MA coverage of SLT at the rate of 2 times per week for 20 weeks with a requested start date of March 28, 2016 at a total cost of \$11,396.00 (P.A. # [REDACTED] dated March 21, 2016).
3. On May 3, 2016 DCHAA denied petitioner's PA request for SLT; DCHAA sent a letter to petitioner dated May 3, 2016 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.
4. Petitioner attends school 2 ½ hours per day for 4 days per week; at school he receives SLT for 45 minutes each week; he also attends daycare.
5. The SLT requested in P.A. # [REDACTED] and petitioner's school SLT are working on the similar goal/outcome of developing petitioner's communication skills.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.18(1)(a) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008). One of the specific requirements for *medical necessity* is that the requested service is "not duplicative with respect to other services being provided to the recipient." Wis. Admin. Code § DHS 101.03(96m)(b)6. (December 2008)

This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

In determining whether to approve or disapprove a request for prior authorization, DCHAA is required to consider the limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines. Wis. Admin. Code § DHS 107.02(3)(e)9. (August 2015).

The Secretary of the Wisconsin Department of Health and Family Services ["DHFS"]¹ has determined that a service is duplicative of an existing service if the intended outcome of the 2 services is substantially the same and stated that MA may not pay for a service if another service provided to the recipient has the same intended outcome or result with respect to the medical condition the services are intended to address. As a specific example, the DHFS Secretary found that PA for private SLT cannot be approved when the recipient was receiving school based SLT "because the providers are working on the similar goal/outcome of developing petitioner's communication skills." The DHFS Secretary reached this conclusion even though

¹ Effective July 1, 2008 DHFS became the Wisconsin Department of Health Services ["DHS"].

the private SLT and school SLT were working on different concepts in developing the recipient's communication skills, the school SLT Therapist agreed that private SLT was necessary, the school SLT Therapist could not work one-on-one with the recipient sufficiently because she had other children to work with in the short time allowed by the school, the school was unable to provide additional SLT because of time and budgetary constraints, and the private SLT would work on different speech concepts using a more intensive one-on-one approach. See, DHA Case No. MPA-37/80183 (Wis. Div. Hearings & Appeals Final Decision February 16, 2007; Proposed Decision December 28, 2007) (DHFS).²

The DHFS Secretary reaffirmed all of the above in another Final Decision relating to Occupational Therapy ["OT"]. See, DHA Case No. MPA-49/82886 (Wis. Div. Hearings & Appeals Final Decision June 1, 2007; Proposed Decision April 24, 2007) (DHFS). In that case both the requested private OT and petitioner's school OT had as their intended outcome an increase in petitioner's functional skills. The DHFS Secretary noted that it is true that the school OT stated that its intended outcome is for "within the school environment" -- but, based on the DHFS definition of *duplicative*, the DHFS Secretary determined that this did not make the intended outcome of the school OT substantially different than the intended outcome of the requested private OT and concluded that the requested private OT would duplicate petitioner's school OT. The DHFS Secretary further noted that: petitioner had provided much evidence to show that the requested private OT is substantially different from petitioner's school OT and that petitioner needs the combined services of private OT and school OT in order to reach his goals; that the evidence shows that the private therapy focuses on skills for daily living in community settings whereas the school OT focuses on academic skills; that the goals of the private OT and the school OT are substantially different in most respects; and, that there has been coordination between the private OT and school OT in order to avoid duplication. Nevertheless, as already noted, under the DHFS definition of duplicative, the DHFS Secretary concluded that the requested private OT duplicated petitioner's school OT.

In this case the SLT requested in P.A. # [REDACTED] and petitioner's school SLT are working on the similar goal/outcome of developing petitioner's communication skills. Therefore, I must conclude that the requested private SLT would duplicate petitioner's school SLT. It follows that PA was properly denied.

It is not necessary to consider the other reasons DCHAA gave for its denial.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for DCHAA to deny petitioner PA for SLT.

NOW, THEREFORE, it is ORDERED

that the petition for review herein be and the same is hereby DISMISSED.

² It is noted that on March 15, 2007 DHA Case No. MPA-37/80183 was appealed to Marathon County Circuit Court. The Circuit Court reversed the DHFS Secretary's Final Decision in DHA Case No. MPA-37/80183. See, *Peyton D. Anderson v. Wisconsin Department of Health and Family Services, Division of Health Care Financing*, No. 07-CV-263 (Wis. Cir. Ct. Marathon County Final Judgment For The Purpose Of Appeal dated March 20, 2008). Nevertheless, as an Administrative Law Judge ["ALJ"] I must still follow the DHFS Secretary's Final Decision in DHA Case No. MPA-37/80183. This is particularly true in this case since the DHFS Secretary, and also the DHS Secretary, have affirmed Final Decision MPA-37/80183 in at least 2 subsequent Final Decisions. See, DHA Case No. MPA-49/82886 (Wis. Div. Hearings & Appeals Final Decision June 1, 2007; Proposed Decision April 24, 2007) (DHFS) [discussed second above]; and, DHA Case No. MPA-44/101599 (Wis. Div. Hearings & Appeals Final Decision December 17, 2009; Proposed Decision April 3, 2009) (DHS); See also in accord, DHA Case No. MPA-11/99697 (Wis. Div. Hearings & Appeals Final Decision May 22, 2009; Proposed Decision January 15, 2009) (DHS) (reserved in Circuit Court).

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

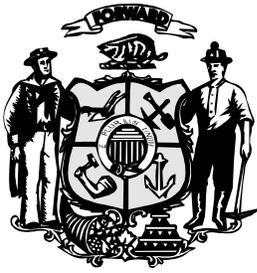
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of 2016

\s _____
Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 1, 2016.

Division of Health Care Access and Accountability